

IC 14-25-5

Chapter 5. Emergency Regulation of Surface Water Rights

IC 14-25-5-1

Applicability of chapter

Sec. 1. This chapter applies to each freshwater lake that contains at least ten (10) acres at the body of water's normal level.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-2

"Financial responsibility bond" defined

Sec. 2. As used in this chapter, "financial responsibility bond" means a surety bond, a certificate of deposit, a cashier's check, or a letter of credit.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-3

"Freshwater lake" defined

Sec. 3. (a) As used in this chapter, "freshwater lake" means a body of standing surface water that:

(1) is of natural origin; or

(2) was:

(A) originally constructed to permanently retain water; and

(B) in existence at least five (5) years before the commencement of water withdrawals by a significant water withdrawal facility.

(b) The term does not include Lake Michigan.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-4

"Lake owner" defined

Sec. 4. As used in this chapter, "lake owner" means a person in possession of property that includes:

(1) a physical part of; or

(2) a legal interest in;

a freshwater lake.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-5

"Significant water withdrawal facility" defined

Sec. 5. As used in this chapter, "significant water withdrawal facility" means a water pumping installation or other equipment of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of water in one (1) day.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-6

Investigations

Sec. 6. Not later than five (5) days after receiving a written complaint from a lake owner that:

- (1) the level of a freshwater lake has been lowered:
 - (A) significantly below the lake's normal level as legally established under IC 14-26-4 or under IC 13-2-13 (before its repeal); or
 - (B) if the normal level has not been legally established under IC 14-26-4 or under IC 13-2-13 (before its repeal), significantly below the water line or shoreline as determined by existing water level records or by the action of the water that has marked upon the soil of the bed of the lake a character distinct from that of the bank with respect to vegetation and the nature of the soil; and
- (2) the lowering of the lake level is believed to be caused by at least one (1) active significant water withdrawal facility operated within one-half (1/2) mile of the freshwater lake;

the director shall give notice to those persons responsible for the operation of the significant water withdrawal facility believed to have caused lowering of the lake level and cause an onsite investigation to be made.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-7

Freshwater lake emergency; based on investigation

Sec. 7. (a) If an onsite investigation under section 6 of this chapter discloses that:

- (1) the operation of at least one (1) significant water withdrawal facility has caused the freshwater lake to be lowered significantly below a level described in section 6(1) of this chapter; and
 - (2) the lowering of the lake level is likely to result in significant environmental harm to the freshwater lake or to adjacent property;
- the director shall, by temporary order, declare a freshwater lake emergency.

(b) A temporary order may:

- (1) restrict the quantity of water that is extracted by the causative significant water withdrawal facility; and
- (2) provide for the restoration of the normal water level of the freshwater lake;

as needed to prevent significant environmental harm to the freshwater lake or adjacent property.

(c) A restoration order under subsection (b)(2) may allow the significant water withdrawal facility to discharge water of an acceptable quality into the affected freshwater lake.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-8

Freshwater lake emergency; effectiveness

Sec. 8. A temporary order under section 7 of this chapter is effective when a copy of the order is served under IC 4-21.5-3-1 upon a person that owns or operates the significant water withdrawal facility.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-9

Temporary orders upon finding of improper management or poor maintenance

Sec. 9. If an onsite investigation under section 6 of this chapter discloses that the complaining lake owner has, through improper management or poor maintenance of the lake, caused or contributed to the lowering of the freshwater lake to a level significantly below a level described in section 6(1) of this chapter, the director may:

- (1) not issue a temporary order under section 7 of this chapter; or
- (2) issue a temporary order under section 7 of this chapter that requires the significant water withdrawal facility to restrict the facility's extraction of water or restore water only to the extent the director determines the lowering of the freshwater lake level is caused by the significant water withdrawal facility.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-10

Financial responsibility bonds; filing

Sec. 10. (a) Except as provided under subsection (b), the operator of a significant water withdrawal facility may obtain relief from a temporary order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) by filing with the director a financial responsibility bond in an amount not:

- (1) less than one thousand dollars (\$1,000); or
- (2) more than ten thousand dollars (\$10,000);

for each acre contained in the freshwater lake. The aggregate amount of financial responsibility bond that may be assessed on the operator of a significant water withdrawal facility may not exceed fifty thousand dollars (\$50,000).

(b) The director may not allow a significant water withdrawal facility to file a financial responsibility bond under subsection (a) if the department determines that a freshwater lake or an adjacent property contains an extraordinary or a unique natural resource that is likely to be irreparably damaged as a result of the lowering of the freshwater lake. The burden of proof to establish the presence of an extraordinary or a unique natural resource rests with the department.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-11

Financial responsibility bonds; compensation, forfeiture

Sec. 11. (a) After a bond is filed under section 10 of this chapter, the operator of a significant water withdrawal facility and a complaining lake owner may enter into a written agreement for compensation to the lake owner instead of bond forfeiture.

(b) If:

- (1) the operator and lake owner have not entered into an agreement within three (3) years after a temporary order under section 7 of this chapter has been issued; and
- (2) the freshwater lake has not returned to normal;

the director shall order the forfeit to the benefit of the lake owner of the part of the bond filed under section 10 of this chapter that is needed to

provide compensation under section 10 of this chapter.

(c) If a financial responsibility bond has been filed for the benefit of more than one (1) complaining lake owner, the amount of the bond forfeited under subsection (b) shall be distributed to the affected complaining lake owners on a pro rata basis.

(d) Instead of forfeiting a bond under subsection (b), the operator of a significant water withdrawal facility may pay cash to a lake owner in the amount of the part of the bond forfeited under subsection (b).

As added by P.L.1-1995, SEC.18.

IC 14-25-5-12

Agreements to compensate owners for diminution in value

Sec. 12. A significant water withdrawal facility and a lake owner may enter into an agreement to compensate the lake owner for the diminution in value of the lake owner's property caused by significant lowering of the lake level. If a significant water withdrawal facility and a lake owner enter into an agreement under this section, the owner of the significant water withdrawal facility is not required to file a financial responsibility bond under section 10 of this chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-13

Temporary orders

Sec. 13. (a) A temporary order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) must include a notice of hearing to be held under IC 4-21.5-4 as soon as practicable after the declaration of the freshwater lake emergency. Following the hearing, the director may continue, amend, or terminate the freshwater lake emergency order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal).

(b) If a freshwater lake emergency order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) is terminated after a bond under section 10 of this chapter or under IC 13-2-2.6-13 (before its repeal) has been filed, the termination order must provide for the immediate release of the bond.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-14

Permanent orders

Sec. 14. Upon application by the director or a lake owner, the commission may cause a temporary order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) to be made a permanent order. A permanent order is subject to IC 4-21.5-3-6.

As added by P.L.1-1995, SEC.18.

IC 14-25-5-15

Violations

Sec. 15. (a) A person who violates this chapter commits a Class A infraction.

(b) The commission may, without proof of irreparable injury, maintain an action to enjoin a violation of this chapter.

As added by P.L.1-1995, SEC.18.